

Mr. Zuckerman

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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-201391

DATE: December 31, 1980

MATTER OF: Marine Engineers Beneficial Association

## DIGEST:

[Protest against award of subcontract] by prime contractor with Government will not be considered where only Government involvement is approval of award.

District 2, Marine Engineers Beneficial Association - AMO, AFL-CIO (MEBA) protests the award of a subcontract by Rockwell International, Inc., a prime contractor with the Department of Energy, to perform at-sea demonstrations of Ocean Thermal Energy Conversion technology. MEBA contends that the subcontract improperly fails to require the subcontractor to comply with the minimum wage and fringe benefit provisions of the Service Contract Act of 1965, 41 U.S.C. § 351 et seq. (1976).

We first point out that section 20.1(a) of our Bid Protest Procedures, 4 C.F.R. part 20 (1980), requires that a party be "interested" in order that its protest may be considered. Based on that provision, we recently dismissed a protest by the same union against an agency's exercise of a contract option. Marine Engineers Beneficial Association, Seafarers International Union, B-195550, December 5, 1980, 80-2 CPD \_\_\_\_\_. We held that the interest contemplated by section 20.1(a) was in such case represented by firms that would have competed if the option had not been exercised, none of which expressed a timely indication of interest in performing the services involved in the option.

Similarly, we are not aware that any offeror for the subcontract award has protested the matter raised here by MEBA.

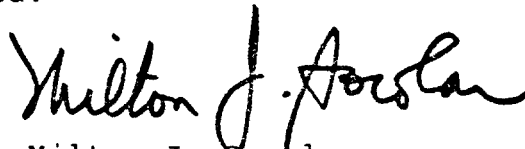
In any event, our Office will consider subcontract protests only in limited circumstances: (1) where the prime

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contractor is acting as a purchasing agent of the Government; (2) where the Government's active or direct participation in the selection of the subcontractor has the net effect of rejecting or selecting a potential subcontractor, or significantly limiting subcontract sources; (3) where fraud or bad faith is shown in the Government's approval of the subcontract award or proposed award; (4) where the subcontract is "for" an agency of the Government; or (5) where the questions concerning the award of subcontracts are submitted by Federal officials who are entitled to advance decisions by this Office. Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166.

MEBA's protest indicates that the only Federal involvement in the subcontract procurement in issue is that DOE had to approve any proposed award. We have consistently held that, absent fraud or bad faith on the part of Government procuring officials, neither of which is alleged here, Government approval of a subcontract award is an insufficient basis upon which to invoke our jurisdiction. See Reflectone, Inc., B-200237, November 6, 1980, 80-2 CPD \_\_\_\_; New Brunswick Scientific Co., Inc., B-195454, August 20, 1979, 79-2 CPD 135.

The protest is dismissed.



Milton J. Socolar  
General Counsel